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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
3404 E. Harmony Road
Mail Stop 35
FORT COLLINS, CO 80528

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JERRY.SHORMA@HP.COM
ipa.mail@hp.com
laura.m.clark@hp.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SANKAR RAM SUNDARESAN and JEFF A. PARKS

Appeal 2009-006620
Application 10/676,219
Technology Center 2400

Decided: June 28, 2010

Before ROBERT E. NAPPI, MARC S. HOFF, and DEBRA K. STEPHENS
Administrative Patent Judges.

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection of claims 1 through 5, 7 through 13, 15 through 21, and 23 through 29[1].

We affirm.

INVENTION

The invention is directed to a system to analyze performance data about the processing of transactions performed using web applications. See paragraph 0002, 0014 and 0015 of Appellants' Specification. Claim 1 is representative of the invention and reproduced below:

> 1. A system comprising presentation architecture for creating applications, the presentation architecture comprising:
> a controller generator that is adapted to provide an application with a controller that receives a request to perform a transaction and completes the transaction in part, by responding to the request; and
> transaction tracking logic that is adapted to provide the application with a plurality of transaction managers, each transaction manager being adapted to record tracking information about transactions of a specific type, wherein the transaction tracking logic is adapted to provide the application with an ability to interface with a logging program to log data collected by the plurality of transaction managers.

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[1] We note that the statement of the rejection in the Final Rejection and Examiner's answer contains a typo identifying cancelled claim 4, 14, and 22 is included in the rejection

REFERENCES

Wilson	US 6,714,976 B1	Mar. 30, 2004
Oulu	US 2004/0068569 A1	Apr. 8, 2004
Tugenberg	US 7,103,782 B1	Sep. 5, 2005

REJECTIONS AT ISSUE

Initially, we note that the Examiner has objected to the term "tangible machine readable medium" in claims 25 through 29. This objection is directed to a petitionable matter and not an appealable matter. As such, we will not address the issue. *See In re Schneider*, 481 F.2d 1350, 1356-57, (CCPA 1973) and *In re Mindick*, 371 F.2d 892, 894, (CCPA 1967). *See also* Manual of Patent Examining Procedure (MPEP) (8th Ed., August 2001) § 1002.02(c), item 3(g) and § 1201.

The Examiner has rejected claim 25 under 35 U.S.C. § 112, second paragraph as the limitation "the transaction tracking logic" lacks antecedent basis. Answer 3.[2]

The Examiner has rejected claims 1 through 4, 7 through 12, 15 through 20 and 23 through 28 under 35 U.S.C. § 103(a) as being unpatentable over Oulu in view of Wilson. Answer 4-10.

The Examiner has rejected claims 5, 13, 21, and 29 under 35 U.S.C. § 103(a) as being unpatentable over Oulu in view of Wilson and Tugenberg. Answer 11-13.

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[2] Throughout the opinion we refer to the Answer mailed April 14, 2008.

ISSUES

Rejection of claim 25 under 35 U.S.C. § 112, first paragraph

Appellants argue on page 9 the Appeal Brief that the Examiner's rejection of claim 25 under 35 U.S.C. § 112 is in error.

Thus, Appellants' contentions with respect to the rejection of claim 25 under 35 U.S.C. § 112, present us with the issue: did the Examiner err in finding that the term "the transaction tracking logic" lacks antecedent basis in claim 25?

Rejection of claims 1 through 4, 7 through 12, 15 through 20 and 23 through 28 under 35 U.S.C. § 103(a)

On pages 9 through 13 of the Appeal Brief, Appellants argue that the Examiner's rejection of claims 1 through 4, 7 through 12, 15 through 20 and 23 through 28 under 35 U.S.C. § 103(a) is in error.[3] Appellants assert that Wilson teaches away from Oulu and as such the two references cannot be combined to arrive at the embodiment recited in claim 1. Brief 12.

Thus, Appellants' contentions present us with the issue: do the teachings of Wilson teach away from combination with the teachings of Oulu?

Rejection of claims 5, 13, 21, and 29 under 35 U.S.C. § 103(a).

Appellants argue on page 13 and 14 of the Appeal Brief that these claims depend upon independent claims 1, 9, and 17 and that the rejection of

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[3] Appellants' arguments address these claims as a group. Accordingly we select claim 1 as representative of the group.

these claims are in error for the same reasons as discussed with respect to claim 1.

Thus Appellants' contentions with respect to the Examiner's rejection of claims 5, 13, 21, and 29 present us with the same issues as discussed above with respect to claim 1.

PRINCIPLES OF LAW

> A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. The degree of teaching away will of course depend on the particular facts; in general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant.

In re Gurley, 27 F.3d 551, 553 (Fed. Cir. 1994) (citing *United States v. Adams*, 383 U.S. 39, 52 (1966)). However, a reference that "teaches away" does not per se preclude a prima facie case of obviousness, but rather the "teaching away" of the reference is a factor to be considered in determining unobviousness. *Id.* The mere disclosure of more than one alternative does not constitute a teaching away because such a disclosure does not criticize, discredit, or otherwise discourage the solution claimed. *In re Fulton* 73 USPQ 2d 1141, 1146 (Fed Cir 2004).

ANALYSIS

Rejection of claim 25 under 35 U.S.C. § 112,

Appellants' arguments have not persuaded us that the Examiner erred in finding that the term "the transaction tracking logic" lacks antecedent

basis in claim 25. Appellants' argument on page 9 of the Brief that the Specification provides antecedent basis for the term "transition logic" misses the point of the Examiner's rejection. Claim 25 recites a "transaction tracking code" and further recites "where in the transaction tracking logic is adapted ...." Thus it is unclear whether the recited "transition tracking logic" is the same as the "transaction tracking code" or if it is referring to a different element. As such, we concur with the Examiner that the scope of claim 25 is not clear, and we sustain the Examiner's rejection of claim 25 under 35 U.S.C. § 112.

Rejection of claims 1 through 4, 7 through 12, 15 through 20, and 23 through 28 under 35 U.S.C. § 103(a)

Appellants' arguments have not persuaded us of error in the Examiner's rejection. The Examiner has found that Oulu teaches an application that receives and responds to requests, and makes use of a probe to track and measure data. Answer 4. The Examiner further finds that Wilson teaches that multiple agents monitor different types of activity and report back to a database, therefore providing the ability to interface with a logging program to store data collected by multiple agents. Answer 5, 14.

Appellants argue that since Oulu teaches adding code for tracking and Wilson teaches that adding code is intrusive, Wilson teaches against combining Oulu and Wilson. Brief 12, Reply Brief 4. We concur with the Appellants' statements on page 11 of the Brief that Oulu teaches adding code for tracking. Further, we recognize that Wilson teaches a technique of editing and recompiling codes to monitor resources is an intrusive approach that requires coordination with vendors of applications on the system. *See*

Wilson, Col. 2, l. 65-col. 3, l. 5. This disclosure of Wilson merely identifies a problem with using systems that involve the editing of codes; however, we do not consider this teaching to discourage the combination presented by the Examiner. Similarly, this disclosure of Wilson does not show that the combination set forth in the Examiner's rejection is unlikely to be productive. Accordingly, Appellants have not persuaded us that the teachings of Wilson teach away from combination with the teachings of Oulu. Thus, we sustain the Examiner's rejection of claims 1 through 4, 7 through 12, 15 through 20, and 23 through 28 under 35 U.S.C. § 103(a).

Rejection of claims 5, 13, 21, and 29 under 35 U.S.C. § 103(a).

As discussed above, Appellants' arguments directed to these claims present us with the same issue as discussed above with respect to claim 1. Accordingly, we sustain the Examiner's rejection of claims 5, 13, 21 and 29 for the reasons discussed *supra* with respect to claim 1.

CONCLUSION

Appellants have not persuaded us of error in the Examiner's rejections of claims 1 through 5, 7 through 13, 15 through 21, and 23 through 29.

ORDER

The decision of the Examiner to reject claims 1 through 5, 7 through 13, 15 through 21, and 23 through 29 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD

HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
3404 E. HARMONY ROAD
MAIL STOP 35
FORT COLLINS, CO 80528